

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM:CTM:TL-N-5186-00
AJKim

date: FEB 9 2001

to: Internal Revenue Service
Office of the Technical Coordinator
1301 Clay Street
Suite 980S
Oakland, C.A. 94612-5210
Attn: Joe Calderaro

from: Large and Mid-Size Business Area Counsel - San Francisco

subject: [REDACTED]

U.I.L. #: 6071.01-00
6081.00-00
6698.00-00
6721.00-00
6722.00-00
7805.00-00

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to the taxpayer or their representative.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

This memorandum modifies our prior advice dated January 22, 2001 to your request for assistance regarding [REDACTED]'s ("[REDACTED]" or "taxpayer") unfiled partnership return (Form 1065) for the short period ending [REDACTED]. Based on our recent discussions with the National Office, this memorandum modifies some of the reasoning contained in our prior written advice but does not alter the original conclusions.

ISSUES

1. Whether the Internal Revenue Service (the "Service") may provide the taxpayer with a letter stating that it will not assert penalties under Internal Revenue Code sections 6698, 6721 and 6722 with respect to taxpayer's unfiled Form 1065 for its short taxable period ended [REDACTED].

2. Pursuant to Treas. Reg. § 1.6071-1(b), whether the Service may prescribe the due date for the filing of taxpayer's Form 1065 for its short period ending [REDACTED] later than [REDACTED], the originally extended due date.

CONCLUSION

1. No. The Service does not have discretion to issue determination letters or letter rulings on whether reasonable cause exists. Rev. Proc. 2001-1, 2001-1 I.R.B. 1. However, the Service may provide the taxpayer with an information letter calling attention to well-established principles of tax law.

2. Yes. Upon a determination that unusual circumstances exist with respect to a short period return, the Service may prescribe a time for filing the Form 1065 later than the time when such return would otherwise be due. Treas. Reg. § 1.6071-1(b).

FACTS

[REDACTED] is a publicly traded partnership under I.R.C. § 7704(b). [REDACTED] principal place of business is located at [REDACTED]. As an "electing [REDACTED] partnership", [REDACTED] is not treated as a corporation despite the fact that it is publicly traded. I.R.C. § 7704(g).

[REDACTED] is [REDACTED] publicly traded investment management company [REDACTED] with assets under management of approximately \$[REDACTED]. As a publicly traded partnership, [REDACTED] consists of a general partner

and many limited partners (the investing public) who hold units of interest in [REDACTED]. [REDACTED] is required to file Form 1065 (U.S. Partnership Return of Income) with the Service which includes a Schedule K-1 for each unit holder reporting his or her tax information.

Brokerage companies trade units of interest in [REDACTED] throughout the year. During the period [REDACTED] to [REDACTED], [REDACTED] consisted of approximately [REDACTED] limited partners.

Based on the public trading of its units of interest, [REDACTED] can identify its limited partners only at the end of each calendar year through information provided by the brokerage companies that traded these interests. Typically, brokerage companies provide identifying partnership unit information to [REDACTED] one month after the close of the calendar year. Upon receiving the information from the brokerage companies, [REDACTED] confirms the accuracy of this data through correspondence with its [REDACTED] to [REDACTED] limited partners. In prior years, [REDACTED] has been able to complete this verification process with its investing public on or about [REDACTED] after the close of the calendar year. The time required to gather the necessary information prompted [REDACTED] to request extensions of time to file its Form 1065 for its taxable years [REDACTED] and [REDACTED]. It is our understanding that for taxable years [REDACTED] and [REDACTED], [REDACTED] assembled the necessary information and timely filed its Form 1065 on [REDACTED] and [REDACTED], respectively.

On [REDACTED], [REDACTED], a wholly owned branch of [REDACTED]¹, acquired [REDACTED]% of the partnership units in [REDACTED] resulting in a statutory termination of the [REDACTED] and a short taxable year. I.R.C. §§ 708(b)(1)(B), 441(b)(3), 441(e), 443(a)(2); Treas. Reg. 1.706-1(c)(1); see Notice 2001-5; 2001-3 I.R.B. 327 (January 16, 2001) (a partnership that terminates under section 708(b)(1)(B) is required to file a short-year final return for the taxable year ending with the date of its termination). Consequently, the due date for [REDACTED] to file its Form 1065 for the short

¹ [REDACTED] ("[REDACTED]") is a registered investment management company located in [REDACTED]. [REDACTED] manages Fixed Income, Equity, and Commercial Mortgage/ Real Estate assets totaling approximately \$[REDACTED]. [REDACTED] is a subsidiary of [REDACTED] headquartered in [REDACTED].

taxable year ended [REDACTED] was [REDACTED]. I.R.C. §§ 443(a)(2), 6072(a); Treas. Reg. §§ 1.443-1(a)(2), 1.6031-1(e)(2).

On [REDACTED], [REDACTED] requested a ruling from the Service under Treas. Reg. § 1.6071-1(b) to prescribe a new due date for its Form 1065 for the short taxable year ended [REDACTED]. During the pendency of this request, it is our understanding that [REDACTED] timely filed Form 8736 (Application for Automatic Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts) and Form 8800 (Application for Additional Extension of Time to File U.S. Return for a Partnership, REMIC, or for Certain Trusts) with the Service for its short period ending [REDACTED]. Based on the filing of Forms 8736 and 8800, it is our understanding that [REDACTED] must file its Form 1065 on or before [REDACTED] with respect to its short taxable year ended [REDACTED].

During a conference call on [REDACTED], [REDACTED] requested that the Service determine "unusual circumstances" to exist pursuant to Treas. Reg. § 1.6071-1(b) and, therefore, to prescribe a time for filing its Form 1065 for its short period return ended on [REDACTED] on or before [REDACTED]. [REDACTED] stated that it would provide the Service with a written statement of facts in order to allow the Service to determine whether "unusual circumstances" exist with respect to the taxable year at issue.

On [REDACTED], [REDACTED] provided the Service with a written statement which set forth factors which it viewed warranted a determination by the Service under Treas. Reg. § 1.6071-1(b) of unusual circumstances. During the pendency of the Service's review of its written statement for purposes of Treas. Reg. § 1.6071-1(b), [REDACTED] proposed that [REDACTED] ([REDACTED]) issue a letter on behalf of the Service agreeing to certain terms and conditions relating to [REDACTED] Form 1065 for the short period ending [REDACTED]. In relevant part, [REDACTED] draft letter provided that with respect to its return for the short period ending [REDACTED], "the IRS will not assert penalties under IRC section 6698, 6721, or 6722..." if it fulfills two conditions: (1) [REDACTED] timely files a "skeletal" return based on all information available to it under the circumstances on or before [REDACTED], the extended due date; and (2) [REDACTED] files an amended Form 1065 on or before [REDACTED] as soon as it obtains complete and accurate information.

ANALYSISISSUE #1:

[REDACTED] proposal dated [REDACTED] constitutes a request for the Service to issue a determination letter waiving the assertion of certain penalties, including the penalty for failure to file a return, with respect to its unfiled partnership return for which the extended due date has not yet expired. Based on our review of the taxpayer's draft letter, it is our opinion that the Service cannot execute the proposed letter. See Rev. Proc. 2001-1, 2001-1 I.R.B. 1, Sec. 7.02.²

Section 2.03 of Rev. Proc. 2001-1 defines a "determination letter" as "a written statement issued by a director that applies the principles and precedents previously announced by the national office to a specific set of facts." A determination letter issued by a director has the same effect as a letter ruling. Rev. Proc. 2001-1, Sec. 13.01. In this case, the taxpayer proposes that the director issue a letter determining that the Service will not assert penalties under I.R.C. sections 6698, 6721 and 6722 in light of the taxpayer's "unusual circumstances" relating to its short period ending [REDACTED].³

²On January 2, 2001, the Service published Rev. Proc. 2001-1, 2001-1 I.R.B. 1, Rev. Proc. 2001-3, 2001-1 I.R.B. 111 and Rev. Proc. 2001-7, 2001-1 I.R.B. 236. Generally, Rev. Proc. 2001-1, 2001-3 and 2001-7 are effective January 15, 2001. Section 1 of Rev. Proc. 2001-1 provides definitions of the new office titles resulting from the Service's re-organization. In part, Rev. Proc. 2001-1 provides that any reference to a "director" or "field office" refers to "the Director, Field Operations, LMSB, the Area Director, Field Compliance, SB/SE, or the Director, Compliance, W&I, as appropriate, and their respective offices or, when appropriate, the Director, International, LMSB, the Director, Employee Plans Examinations, the Director, Exempt Organizations Examinations, the Director, Federal, State & Local Governments, the Director, Tax Exempt Bonds, or the Director, Indian Tribal Governments, and their respective offices..."

³Section 3 of Rev. Proc. 2001-1 provides that taxpayers may request determination letters within the jurisdiction of the appropriate director offices that relate to Code sections under the jurisdiction of the Associate Chief Counsel (Corporate), the Associate Chief Counsel (Financial Institutions & Products), the Associate Chief Counsel (Income Tax & Accounting), the Associate Chief Counsel (International), the Associate Chief Counsel (Passthroughs & Special Industries), the Associate Chief Counsel

Thus, [REDACTED] draft letter constitutes a request for a determination letter.

The Service cannot execute the taxpayer's proposed determination letter for several reasons. First, the Service cannot issue a determination letter to rule whether under Subtitle F (Procedure and Administration) reasonable cause, due diligence, good faith, clear and convincing evidence, or other similar terms that require a factual determination exist. Rev. Proc. 2001-3, Sec. 3.02. Second, the determination letter request does not meet the general guidelines set forth under Section 8 of Rev. Proc. 2001-1. Third, even if [REDACTED] satisfied the general requirements in its request, section 7.02 of Rev. Proc. 2001-1 provides that the Service has no discretion to issue letter rulings or determination letters on hypothetical situations. See also Rev. Proc. 2001-3, 2001-1 I.R.B. 111, Sec. 3.02(3). It is our understanding that [REDACTED] received an extension to file its Form 1065 on or before [REDACTED] with respect to its short taxable year ended [REDACTED]. Further, it is our understanding that [REDACTED] has not yet filed its Form 1065 for this short period. Based on these circumstances, the issue of whether the Service would assert section 6698 (failure to file partnership return), 6721 (failure to file correct information returns) or 6722 (failure to furnish correct payee statements) penalties poses a hypothetical situation. Accordingly, it is our opinion that the Service cannot issue the determination letter as proposed by the taxpayer. Rev. Proc. 2001-1, Sec. 7.02.

However, section 7.01 of Rev. Proc. 2001-1 provides that the National Office or a director may, when it is considered appropriate and in the best interests of the Service, issue an information letter calling attention to a well-established interpretation or principle of tax law without applying it to a specific set of facts. See Rev. Proc. 2001-1, Sec. 2.04 (defining "information letter"). Therefore, we recommend that you: (1) inform [REDACTED] that its request involves an issue on which the Service will not issue a determination letter⁴; and (2) provide [REDACTED] with an information

(Procedure and Administration) or the Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities).

⁴Section 14.02 of Rev. Proc. 2001-1 provides that for "no-rule areas", the field office will notify the taxpayer that the Service will not issue a letter ruling or determination letter. Further, the revenue procedure directs that the "no rule area" request will not be forwarded to the national office.

letter which provides, in part, as follows:

Pursuant to section 7.01 of Rev. Proc. 2001-1, 2001-1 I.R.B. 1, we are providing you with this information letter in response to your request for assistance with respect to your short period ending [REDACTED]. Please note that information letters are advisory only and have no binding effect on the Service. Rev. Proc. 2001-1, 2001-1 I.R.B. 1, Sec. 16.03.

No provision in the Code permits the late filing of partnership returns, absent a showing of reasonable cause, after the Secretary has granted a reasonable extension of time which cannot exceed six months from the prescribed due date. All available information must be used to prepare and file returns which are as complete as [REDACTED] can make them under the circumstances. If additional information comes to light after the short period return is filed, [REDACTED] can file an amended return. There are no regulations under section 6698 of the Code. However, it may be helpful to look at the regulations under section 6651 concerning the establishment of reasonable cause for failure to file an individual income tax return. Section 301.6651-1(c)(1) of the Regulations on Procedure and Administration provides that:

a taxpayer who wishes to avoid the addition to the tax for failure to file a tax return....must make an affirmative showing of all facts alleged as a reasonable cause for his failure to file such return...on time in the form of a written statement containing a declaration that it is made under penalties of perjury. Such statement should be filed with the [] director of the service center with whom the return is required to be filed....

By analogy to the regulations under section 6651 of the Code, if you believe that the partnership's inability to file its short period ending [REDACTED] return on time will be due to reasonable cause you may wish to attach a statement made under penalties of perjury, showing all of the facts alleged as reasonable cause for failure to file on time, to the return when it is filed.

ISSUE #2:

Code section 6071(a) provides the general rule that "[w]hen not otherwise provided for by this title, the Secretary shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations." With respect to a short period return, prescribing a time for filing the return for such period later than the time when such return would otherwise be due is in the province of the director. Treas. Reg. § 1.6071-1(b). Upon a determination that "unusual circumstances" exist with respect to [REDACTED] short period return, the Service may prescribe the due date for the filing of its Form 1065 later than [REDACTED], the originally extended due date. Id.

The prohibition under code section 6081(a) that no extension shall be more than six months does not conflict with the director's separate authority under Treas. Reg. § 1.6071-1(b) to "prescribe a time for filing the return for such [short] period..." (emphasis added). Code section 6081(a) provides the general rule relating specifically with the granting of extensions of time for filing returns.

The Secretary may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

Section 6071 authorizes the Service to prescribe the time for filing a return, while section 6081 authorizes the Service to grant a reasonable extension. Thus, the authority granted to the Director under Treas. Reg. § 1.6071-1(b) does not implicate or conflict with the statutory scheme set forth in section 6081 and, as such, is not subject to the six month limitation.

The pertinent regulations substantially restates code sections 6071 and 6081 and clarifies their application. Treasury regulation sections 1.6071-1 and 1.6081-1 provide directors with authority to exercise distinct functions. Treas. Reg. § 1.6071-1 provides, in part, as follows:

(a) **In general.** Whenever a return, statement, or other document is required to be made under the provisions of subtitle A or F of the Code, or the regulations thereunder....it shall be filed at the time prescribed by the regulations contained in this chapter with respect to such return, statement, or other document.

(b) **Return for a short period.** In the case of a return with respect to tax under subtitle A of the Code for a short period (as defined in section 443), the district director or director of the Internal Revenue Service Center may, upon a showing by the taxpayer of unusual circumstances, prescribe a time for filing the return for such period later than the time when such return would otherwise be due.

Treas. Reg. § 1.6081-1 provides, in part, as follows:

(a) **In general.** District directors and directors of service centers are authorized to grant a reasonable extension of time for filing any return, declaration, statement, or other document ...

Under this scheme, the authority exercised by directors pursuant to Treas. Reg. § 1.6071-1(b) to prescribe a time for filing the return for short periods cannot be read to encompass the granting of extensions to file returns - an area of authority specifically covered under Treas. Reg. § 1.6081-1(a). But see I.R.S. Announcement 87-82, I.R.B. 1987-37 (finding of "unusual circumstances" warrants "an extension of the time for filing the short period return under section 1.6071-1(b)..."). Consequently, the director's exercise of authority pursuant to Treas. Reg. § 1.6071-1(b) to prescribe a time for filing a short period return is not limited by I.R.C. § 6081(a) which prohibits the Secretary from granting extensions beyond six months.

If the Service determines that "unusual circumstances" exist with respect to [REDACTED] short period return, the duly authorized official may prescribe a time for filing the taxpayer's Form 1065 for such period later than the time when such return would otherwise be due. Treas. Reg. § 1.6071-1(b). Treasury regulation section 1.6071-1(b) authorizes the "district director" or "director of the Internal Revenue Service Center" to prescribe a time for filing the short period return. As a result of the reorganization of the Service into four operating divisions, Delegation Order number 193 (Rev. 6) delegates to "Assistant Deputy Commissioners, Division Commissioners; Chiefs; and Directors, Submission Processing Field, Compliance Services Field, and Accounts Management Field" the authority to take actions previously delegated to "District Directors" and "Directors of Service Centers" by Treasury regulations, Treasury Decisions, or Revenue Procedures for matters under their jurisdiction. I.R.M. 1.2.2.107(6), (7). This delegation order is effective November 8, 2000.

Delegation Order number 193 (Rev. 6) provides that the identified officials may re-delegate this authority. However, we have been unable to determine whether the identified officials in Delegation Order number 193 (Rev. 6) have re-delegated the authority to the level of Director, Field Operations. Accordingly, we recommend that in the Service's determination of whether "unusual circumstances" may exist under Treas. Reg. § 1.6071-1(b) the duly authorized official perform this function. See Deleg. Order No. 193 (Rev. 6); I.R.M. 1.2.2.107(6), (7).

Should you have any questions, please contact Anthony J. Kim at (415) 744-9217 ext. 144.

James W. Clark
Area Counsel

By: /s/ Anthony J. Kim

Anthony J. Kim
Attorney (LMSB)